



Federal Communications Commission
Washington, D.C. 20554

February 9, 2023

In Reply Refer To:
1800B3-KV

Broadcast Sciences, LLC
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In re: W221DG, Exton, PA
Broadcast Sciences, LLC
Facility ID No. 142298
Application File No. BLFT-20170106ACP

Interference Complaint

Dear Counsel and Licensee:

This letter refers to the “Interference Complaint” (Complaint) filed on May 12, 2020, by Clear Communications, Inc.¹ The Complaint alleges that Translator Station W221DG, Exton, Pennsylvania (W221DG or Translator Station)² is causing harmful interference to the over-the-air reception of WVLT(FM), Vineland, New Jersey (WVLT(FM) or Complaining Station).³ For the reasons discussed below, we grant the Complaint and require BSL to immediately cease operation of W221DG.

Pursuant to section 74.1203(a) of the Commission’s rules (Rules), an FM translator station “will not be permitted to continue to operate if it causes any actual interference to . . . the direct reception by the public of off-the-air signals of any authorized broadcast station.”⁴ The Commission has interpreted “direct reception by the public” to limit actionable complaints to those that are made by *bona fide* listeners.⁵ In

¹ Complaint of Clear Communications, Inc. (CCI), Application File No. BLFT-20170106ACP.

² W221DG is licensed to Broadcast Sciences, LLC (BSL).

³ WVLT(FM) is licensed to CCI.

⁴ 47 CFR § 74.1203(a).

⁵ See *Ass’n for Cmty Educ., Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12688, para. 16 (2004).

the *Translator Interference Order*,⁶ the Commission adopted certain changes to the translator interference complaint resolution process requiring stations complaining of interference to submit a valid and complete interference claim package consisting of specified technical showings along with a required minimum of rule-compliant listener complaints.⁷ If the Commission concludes that a complaining station has filed a valid and complete interference claim package, then the translator station will be ordered to remediate the interference within a specified time period or, alternatively, demonstrate that the complaining station has not submitted a valid and complete interference package.⁸ If the translator station fails to remediate the interference or demonstrate that the interference claim is not valid and complete, then the translator station may be ordered to cease operations.⁹

Here, the Media Bureau (Bureau) reviewed CCI's Complaint and found it to be a valid and complete interference claim package with 27 rule-compliant listener complaints.¹⁰ Therefore, on July 24, 2020, the Bureau ordered BSL to file, within 30 days, a plan to resolve the interference and, to file, within 60 days, specified evidence demonstrating that the interference had been resolved, or alternatively, to file, within 30 days, evidence demonstrating that CCI's Complaint is not a valid and complete interference claim package.¹¹ The Bureau further cautioned BSL that "[f]ailure to comply with the remediation timeline may result in W221DG being ordered to cease operations."¹²

On August 25, 2020, BSL responded that W221DG had suspended operations on August 24, 2020.¹³ BSL further stated that W221DG would remain silent until BSL was able to address the interference caused to WVLTV(FM).¹⁴ On August 26, 2020, BSL filed a request for special temporary authority for W221DG to remain silent.¹⁵ On October 15, 2020, the Bureau granted an STA permitting W221DG to remain silent until April 13, 2021.¹⁶ BSL did not file a request to extend the STA, nor did BSL file a notification that W221DG had resumed operations.

⁶ *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, MB Docket No. 18-119, Report and Order, 34 FCC Rcd 3457 (2019) (*Translator Interference Order*), *recon denied*, Order on Reconsideration, 35 FCC 11561 (2020). The *Translator Interference Order* became effective on August 13, 2019. *Effective Date of Amended Rules for FM Translator Interference*, MB Docket No. 18-119, Public Notice, 34 FCC Rcd 7004 (2019).

⁷ 47 CFR §§ 74.1203(a)(3), 74.1204(f); *Translator Interference Order*, 34 FCC Rcd at 3463-3468, 3469-3470.

⁸ *Id.* at 3468-3469, para 21.

⁹ *Id.* at 3471, para 27.

¹⁰ See *Letter from James D. Bradshaw, Senior Deputy Chief, Audio Division, FCC Media Bureau, to Melodie A. Virtue, Counsel to BSL, and Peter Tannenwald, Counsel to CCI*, Application File No. BLFT-20170106ACP (dated Jul. 24, 2020) (*Remediation Required Letter*).

¹¹ *Id.* at 2-3.

¹² *Id.* at 3.

¹³ See *Letter from Jeffrey J. DePolo, Managing Member, BSL, to James D. Bradshaw, Senior Deputy Chief, Audio Division, FCC Media Bureau*, Application File No. BLFT-20170106ACP (dated Aug. 25, 2020) (*BSL Remediation Response*).

¹⁴ *Id.*

¹⁵ Application File No. BSTA-20200826AAE (STA Request).

¹⁶ See *Letter from Victoria McCauley, Attorney, Audio Division, FCC Media Bureau, to Anne Goodwin Crump, Counsel to BSL*, Application File No. BSTA-20200826AAE (dated Oct. 15, 2020) (*STA Grant Letter*).

On April 12, 2022, the Bureau informed BSL that according to Commission records W221DG had been silent since August 24, 2020, and therefore, the W221DG license had expired pursuant to section 312(g)¹⁷ of the Communications Act of 1934, as amended (Act).¹⁸ The Bureau further afforded BSL an opportunity to submit, within 45 days, specified evidence demonstrating that W221DG had in fact returned to the air with authorized facilities prior to 12:01 a.m. on August 25, 2021.¹⁹

On May 26, 2022, BSL responded that “W221DG is currently in operation, and was in operation during portions of [time] . . . between the dates of August 24, 2020, and August 25, 2021.”²⁰ BSL also noted that “[a]ll periods of W221DG operation have been at the licensed location . . . [and] all licensed parameters were maintained with the sole exception of effective radiated power which was purposefully reduced to eliminate interference to co-channel WVLT.”²¹ Specifically, BSL reported that from January 14, 2021, to January 16, 2021, W221DG briefly returned to “[o]peration at reduced power during drive testing/interference evaluation.”²² Next, BSL reported that W221DG was silent from January 17, 2021, to March 14, 2021, and that on March 15, 2021, BSL installed a “lower-power transmitter (Bext LEX-100), [and the Station was] on air at reduced power, [for] drive testing western Delaware County. [W221DG] [was] taken off the air due to instability (spurious emission) noted when operating [the] transmitter at [a] reduced power level.”²³ W221DG was silent from March 16, 2021, to July 9, 2021.²⁴ Lastly, BSL reported that on July 10, 2021, W221DG resumed operations at an unspecified reduced level of power after BSL installed an “external attenuator, [and returned the] [S]tation [to the] air for additional field testing.”²⁵ Since then, the Station has been “operating at reduced power, [with] no reports of interference.”²⁶

We find that BSL has failed to meet its obligation to address the interference caused to the over-the-air reception of WVLT(FM) by filing, within the stipulated timeframe, a plan to resolve the interference along with certain specified evidence demonstrating resolution of said interference²⁷ or

¹⁷ 47 U.S.C. § 312(g).

¹⁸ See *Letter from Albert Shuldiner, Chief, Audio Division, FCC Media Bureau, to BSL*, Application File No. BLFT-20170106ACP (dated Apr. 12, 2022) (*Notification of License Expiration Letter*).

¹⁹ *Id.* at 1.

²⁰ See *Letter from Jeffrey J. DePolo, Managing Member, BSL, to Victoria McCauley, Attorney, Audio Division, FCC Media Bureau*, Application File No. BLFT-20170106ACP (dated May 26, 2020) (*BSL License Response*). The *BSL License Response* refuting that the W221DG had expired pursuant to section 312(g) of the Act was sufficient for grant of the renewal of the W221DG license, but as discussed herein W221DG’s operation at variance from its license authorization is subject to further enforcement review. See Application File No. 0000189843 (W221DG Renewal), granted July 21, 2022.

²¹ *Id.* at 1.

²² *Id.* at 2.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* To date BSL has not filed a request for STA for W221DG’s current operations, as described by BSL. See 47 CFR § 73.1635.

²⁷ In the *Translator Interference Order*, the Commission declared that acceptable plans include the following: 1) relocating to an available same-band FM channel; 2) working with willing listener complainants; or 3) working with the complaining station. Regarding direct listener remediation, if the listener agrees to allow the translator station to adjust or replace its receiver equipment to address interference, the translator station “must document and certify

information demonstrating that CCI has not submitted a valid and complete interference claim package. Here, BSL reports that since July 10, 2021, W221DG has been operating at variance from the W221DG license authorization with unauthorized equipment (a “lower-power transmitter (Bext LEX-100)” and an “external attenuator”) at a reduced level of power.²⁸ Absent prior Commission approval to operate with altered parameters, licensees generally are not permitted to operate at variance from their license authorization.²⁹ Licensees operating at variance from their licensed parameters without Commission authorization risk causing harmful interference to other stations and degrade the accuracy of the Commission’s license databases that are used by Commission staff and other applicants.³⁰ Thus, “the Commission takes seriously cases in which a licensee engages in ‘self-help’ by modifying a station’s operating parameters without providing notice to, or seeking the approval of, the Commission.”³¹ In particular, prior authorization is required for replacement of a transmitter, unless of an identical power rating;³² and except as set forth in section 74.1251(b)(7) of the Rules, prior authorization is required for a decrease in effective radiated power (ERP) levels.³³ To date, BSL has not filed a minor modification application for authorization to replace W221DG’s transmitter and reduce the authorized ERP. Nor has BSL demonstrated that W221DG is eligible, as set forth in section 74.1251(b)(7) of the Rules, to reduce the Station’s ERP on a modification of license application. We also note that BSL has not filed a request for STA for W221DG to operate at a reduced ERP with the Bext LEX-100 transmitter and an external attenuator.³⁴

Moreover, BSL’s operation of W221DG at variance from the licensed parameters falls far short of BSL’s obligation to remediate the interference caused to the over-the-air reception of WVLT(FM).

that the desired station can now be heard on the listener’s receiver.” *Translator Interference Order*, 34 FCC Rcd at 3472, para. 30. If, however, the listener’s equipment is not the cause, or the listener declines to participate in the remediation process, then “the translator operator and the complaining station must work together to resolve the interference complaint using suitable techniques.” *Id.* at 3473, para. 32. The “lack of interference can be demonstrated by on-off tests and/or field strength measurements at the relevant site, provided they take place in a manner *acceptable to both parties*.” *Id.* at 3474, para. 33 (emphasis added). If, however, “the parties fail to agree upon appropriate methods and technical parameters to be used for interference testing at a particular site or sites, the parties should engage a mutually acceptable third party engineer to observe or carry out the testing.” *Id.*

²⁸ See *BSL License Response* at 2. In particular BSL states that on January 14- 16, 2021, W221DG resumed operations at an unspecified reduced power level for interference testing; on March 15, 2021, W221DG again resumed operations at an unspecified power level to test the Station’s unauthorized “lower-power transmitter (Bext LEX-100)” that BSL had installed; and on July 10, 2021, W221DG resumed ongoing operations at an unspecified reduced power level with the unauthorized transmitter and an unauthorized “external attenuator” that BSL had installed. *Id.*

²⁹ See, e.g., 47 CFR § 74.1251; *Ondas de Vida, Inc.*, 35 FCC Rcd 8163, para 1 (EB 2020)(*Ondas de Vida*) (“The Commission expects spectrum licensees to operate within the parameters specified in their licenses and set forth in the applicable service rules. If they are unable to do so, licensees must seek the Commission’s approval to operate with altered parameters.”). See also 47 CFR § 73.1635 (special temporary authorization).

³⁰ See *Ondas de Vida*, 35 FCC Rcd at 8163, para. 1 (“When licensees [engage in unauthorized operations] . . . they risk causing harmful interference to other licensees. Likewise, stations operating at variance from their authorizations degrade the accuracy of the license databases that the Commission uses to ensure that it is maximizing use of increasingly congested spectrum.”).

³¹ *Id.*

³² 47 CFR § 74.1251(b)(1).

³³ 47 CFR § 74.1251(b)(7).

³⁴ See 47 CFR § 73.1635.

Indeed, in a recent filing submitted with the W221DG renewal application, BSL acknowledged that the interference to WVLT(FM) remains unresolved.³⁵

Therefore, we grant the Complaint and order W221DG to cease operations. We further note that our action herein in granting the Complaint and ordering W221DG to cease operations is taken without prejudice to any enforcement action concerning W221DG's unauthorized operations, and it does not require us to draw conclusions of the applicability of section 312(g)³⁶ to the Translator Station's operating history.

Conclusion/Actions. Accordingly, in light of the foregoing, IT IS ORDERED, that the Interference Complaint filed on May 12, 2020, by Clear Communications, Inc., IS GRANTED.

IT IS FURTHER ORDERED that, pursuant to sections 74.1203 and 0.283 of the Rules,³⁷ Broadcast Sciences, LLC, IS HEREBY ORDERED TO CEASE OPERATION OF TRANSLATOR STATION W221DG, Exton, Pennsylvania IMMEDIATELY.³⁸

Sincerely

James D. Bradshaw
Senior Deputy Chief, Audio Division
Media Bureau

³⁵ Specifically, BSL stated, "[t]o date, there has been no mutually-agreeable solution to the purported interference condition which would allow W221DG to operate with licensed facilities . . . [BSL] will be filing an application for a construction permit to modify W221DG which will eliminate interference to WVLT." W221DG Renewal, Attach., Compliance Statement. To date BSL has not filed an application to modify the W221DG facilities.

³⁶ 47 U.S.C. § 312(g).

³⁷ 47 CFR §§ 74.1203 and 0.283.

³⁸ Please note that any request by BSL to operate on channel 221 will be granted only upon an acceptable demonstration that the proposed facilities will not cause interference at all of the listening locations provided by the listener complaints. *See Remediation Required Letter* at 2-3 & n.21; 47 CFR § 74.1203(b) ("If interference cannot be properly eliminated by the application of suitable techniques, operation of the offending FM translator or booster station shall be suspended and shall not be resumed until the interference has been eliminated. Short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.").